2. Examination in Rape Offence

Nepalese criminal law defines 'rape' as any of the following five acts:[10] of *Muluki* Criminal Code, 2074 B.S.(a) Sex with adult women without consent. (b) Sex with girl below 18 years with or without consent. Consent obtained by undue means is invalid. Consent taken while disturbed consciousness is invalid. (c) Sex with wife without consent (marital rape). (d) Oral or anal penetration. (e) Partial penetration at anus/mouth/vagina, and (f) Inserting any object other than penis into vagina. Our rape

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law is conceptually and jurisprudentially defective. It requires to be amended. It is advisable to amend the existing law and criminalize the acts of- (i) oral or anal penetration, (ii) oral or anal partial penetration, and (iii) inserting any object other than penis into vagina, as 'unnatural sexual offences' and not as 'rape'.

Age and consent of female are the two major factors that distinguish whether questioned sexual act amounts rape or not. For this, medico-legal examination of rape victim and alleged suspect is vital. As laid down in *Suman Pahari* case,[11] there are three essential elements of rape offence:

a) Intention to commit rape

b) *Actus reus* of rape

c) Absence of consent from victim

Consent of female in sexual intercourse should be absolute one. Consent obtained by undue means is invalid. Likewise, consent taken while consent giver was at the state of disturbed consciousness, is also invalid. Undue means include consent taken by using fear, coercion, undue influence, misrepresentation or use of force or kidnapping or hostage taking and so on.

Consent given for sexual relation by complainant to defendant founded on simple basis of promise words given by later to former to marry her, is not to be considered as "undue influence" for the purpose of rape as stated in *Arjun Koirala* case[12]

How should rape victim resist or deny sexual encroachment against her has beautifully been interpreted by Supreme court in *Yadav Ghimire* case[13] where it was held- the manner of

11 *Suman Pahari v. Government Nepal, 2074*, D.N. 9801
12 *GoN v. Arjun Koirala*, NKP 2076 (Rape) V 5, DN 10264.
13 *GoN v. Yadav Prasad Ghimire*, Rape, NKP 2072, V 1, DN 9335.

resistance and denial to rape is relative to victim's perception, nature, circumstance of case and it is unfair for any society to impose or expect a uniform mode of resistance behavior to be shown by all rape victims.

Medico-legal examination of victim is important to confirm rape offence, identify offender, and help to ensure justice in rape offence. Rape kit must be available for medical examination of rape including apparatus such as speculum, xylocaine gel, comb for collecting foreign matter in pubic hair, syringes/needles, tubes for collecting blood, glass slides for preparing dry and or dry mounts, cotton gauze for collecting samples, laboratory containers for transporting swabs, tape measure for measuring the size of bruises, lacerations, wounds etc, supplies for universal precaution.[14]

Normally, sperms remain motile in vagina for about 6-8 hours and occasionally 12 hours. Non motile sperms are detectable for about 24 hours with occasional reports of 48 to 72 hours and very rarely 96 hours. Motility remains longer at body temperature. Sperms remain motile in uterine cavity for 3-5 days. Non-motile forms may be found in female genital track for weeks or months after death. If motile sperms are seen on microscopic examination of vaginal swab, it would mean that intercourse has taken place within about 12 hours. If sperms are not motile, it is not possible to say exactly when intercourse took place except that it may be over 12 hours and within about 24-48 and occasionally up to 72 hours. Intact spermatozoa are rarely found in the vagina after 72 hours after coitus.[15]

Absence of sperms in vagina does not mean sexual intercourse has not taken place. It may be due to non-emission, aspermia, previous vasectomy, very old age, or poor technique

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14 Supra note 3 at 37 of 164.

15 Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology 6th Edn. CSB Publications (1999) New Delhi at 5.38.

by the examining doctor. Quantitatively, the normal level of acid phosphate in the vagina is 340 international units (IU) per liter. It rises to about 3000 IU in about 2-3 hours after intercourse and gradually returns to normal in about 12 to 24 hours. Any higher level than 340 IU indicates seminal fluid.[16]

Swabbing of mouth, vagina, and anus for sperm detection should always be performed on rape victims.

Medico legal examination in rape offence is mainly directed towards ascertaining following things:

a) General physical marks of injury and marks of violence over the body of victim,

b) Examination of genital organs of victim,

c) Estimation of victim's age in case victim is or seems minor,

d) Examination of rape accused (male subject),

e) Examination of metal trauma to victim developed after incident

General Rules of Rape Examination

The general rule has clearly prohibited a male medical practitioner from physical examination of rape victim as far as possible. Female medical practitioner should examine the victim. In the case of non-availability of female medical practitioner, any other women should examine the victim under the guidance of male medical practitioner. Examination by the forensic expert is more preferable as far as possible or by trained medical practitioner in case of absence of forensic expert. The examining forensic expert or medical practitioner has to prepare the report oneself. Examination report is to be prepared through computer typing as far as possible or in clear and

16 Ibid at 5.39.

understandable manner. Original report is to be submitted to concerning police office.

General Examination in Rape Offence

General examination of rape offence should be done in following order:

a) Clothes: Clothes of rape victim are examined for the presence of blood and seminal stains and whether these are on the front or on the back of garments. Usually, seminal stains are on the front of the garments.

b) Marks of violence on the body: The body, especially forearms, wrist, face, breasts, chests, lower part of abdomen, inner thighs, and back should be examined for marks of violence such as scratches, abrasions, and bruises caused by struggle.

c) Genitals: The female should be kept in knee-chest position in good light and the thighs should be well separated. Following things should be noted:

- Pubic hair- human spermatozoa.
- Recently effused or dried blood may be found upon the genital organs.
- Bruises and laceration of external genitals may be present with redness.
- Laceration of hymen etc.

d) Signs of venereal infection: Microscopic examination of urethral discharges will sometimes help diagnosis.

Clinical Protocol issued by Government of Nepal has provided specific format guiding for medical practitioner in relation to uniform rape examination all over the nation. The

guidelines require to record following details in course of examination:[17]

A. Detail about the examinee: general details of the examinee are included in this chapter. Details such as name, address, age, name of guardians, and some other relevant things occurred after incident of sexual offence are recorded.

B. General physique and vitals: general physique such as height, weight, pulse, blood pressure, temperature, respiratory rate, degree of consciousness and disability are examined and recorded.

C. External injuries on body, size, site, colour, sign of treatment, healing, active bleeding etc. are examined and recorded.

D. Genital injuries: under genital examination, name, size, site, colour etc. of injuries that may be found at perineum, vulva, vagina, hymen, perianal area and anal orifices and oral cavity etc. are examined and recorded precisely.

E. Conditions of pubic hair, bite marks, specimen preserved for further analysis etc shall be precisely recorded.

Beside medico-legal examination of female subject, the law has also provided specific format for medico legal examination of male subject.[18] According to the format following major things should be examined and recorded while examining male subject:

A. Detail about the examinee: Name, address, attendant of examinee, brief history of the incident, medical history etc. are recorded in the report.

B. General physique and vitals such as height, weight, pulse,

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17 Supra note 3 at Schedule 3 (female subject p. 71) and 4 (male subject p 77) respectively.

18 Supra note 3 at schedule 10B

blood pressure, temperature, respiratory rate, degree of consciousness and presence of any disability of the examinee shall be recorded.

g. Injuries present at body, their site, size, colour, severity, healing condition etc. are examined and are recorded.

h. Under genital injuries, name, size, site, color and other relevant information found that might be found at perineum, penis, scrotum, perianal area and oral cavity are examined and recorded precisely.

i. Other relevant information such as conditions of public hair, bite marks, specimen preserved for further analysis, are recorded.

Importance of Medico-Legal Examination in Rape Offence

Physical injury present in the body of rape victim is vital evidence to identify rape. In *Siyaram Rana* case,[19] Supreme court convicted defendants for rape by taking into consideration three evidences- victim's hymen rupture report, informant's and other's testimonies, and report of Central Police Forensic Science Laboratory stating human semen was detected in pants of victim. This is an example to illustrate how the court applied forensic or medico-legal examination report to confirm guilt beyond reasonable doubt in rape charge.

Hymen is a membranous structure about 1 mm thick that varies in position, consistency, structure and shape. Hymen in a small girl appears to be situated deeply because of rotundity of the labia majora on account of their excessive fat content. Therefore, it may escape injury in attempted rape on them. As the girl approaches puberty, the hymen enlarges and gradually as a fold of mucous membrane when the thighs are separated. Shortly after puberty, it reaches adult form, being situated at the

[19] *Siyaram Rana et.al. v. GoN*, NKP 2074, V. 3, D.N.9784

orifice of vagina and partially closing it. In consistency, the hymen may vary from a thin parchment like membrane to a firm and fleshy or tough and cartilaginous one well supplied with blood vessels. Its structure may be unyielding or elastic and easily distensible. The normal hymen lies between these extremes in consistency and structure. It is supplied with blood vessels sufficient to cause recognizable though not severe hemorrhage when it is ruptured. In the unruptured state, it barely admits the tip of the little finger.

However, rupture of hymen alone is not a determining factor to conclude rape. There are instances where prostitutes have been found with intact hymen. Likewise, virgin girls may have ruptured hymen. Virgin condition may get affected and hymen may even get ruptured due to other general physical activities such as scratching due to irritation, heavy work, cycling, masturbation, infection, trauma, sanitary tampons, gynaecological examination and so on.

Hymen is usually ruptured at the first coitus, and at first only presents a torn appearance. With frequent intercourse the opening of the hymen is enlarged and after the birth of a child, the hymen is completely lost, its presence being represented by several small knobs of tissue known as carunculae hymenales or myrtiformes.[20]

[Human Female external Genital : *See figure 16.1 in figure section]*

[Types of Humen : *See figure 16.2 in figure section]*

Detection of semen in pants or clothes worn by female are common in cases of sexual intercourse with consent. DNA examination of semen collected and comparison with DNA of alleged offender is very important.

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20 Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology 6th Edn. CSB Publications (1999) New Delhi at 5.11.

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Though presence of external physical injury may be one of the factors to determine absence of consent in rape, yet it is not a conclusive factor.

Where legislator prescribes maximum and minimum range of punishment, judge is duty bound to fix sentence using reasonable mind. This depends on circumstances that existed at the time of commission of offence, damages and social effect to victim, physical and mental condition of victim, age and condition of accused and gravity of offence. Thus, medico legal examination of victim is helpful for judge in determining degree/range of punishment offender deserves.

Presence of defensive wounds either at sexual assailant's body or on rape victim's body is helpful to interpret conscious and active physical condition of victim and indicates struggle for protection. The nature and site of the injury marks help to interpret the nature of offence committed. In *Rameshwor Shrestha* case,[21] the court convicted defendant for rape offence taking into consideration the bodily examination report of accused indicating presence of abrasion and scratch marks on neck, chest, abdomen, buttock etc. These wounds and injuries helped court to visualize defensive activities of victim during attempt to rape.

Facts collected via medico legal examination is helpful to determine question of admissibility or inadmissibility of evidences. In rape offence, if evidence provided by medico legal examination report corroborates with circumstantial evidences and first information report, it indicates strong evidence regarding commission of rape. For example, in *Janak Shrestha* case,[22] Supreme Court corroborated hymen rupture report with victim's FIR to held defendant guilty of rape despite the child born to victim unmatched in DNA test with defendant. The

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21 *Rameshwor Shrestha V. GoN*, NKP 2074, V 2, D.N 9765
22 *Janak Shrestha v. GoN*, NKP 2073, V 10, D.N. 9696

court held- matching of DNA between victim's neonate and defendant is irrelevant with rape offence.

Examination of physical and mental injury or loss suffered by victim should be computed precisely by judge in order to determine reasonable compensation for victim. Gravity of offence is one of the major factors in determining amount of compensation.[23]

Where victim (10 years) was raped by defendant (36 years), Supreme court in *Harendra Narayan Dev* case[24] convicted defendant stating- hymen rupture, marks of struggle, ejaculation etc are not mandatory elements under Nepalese rape law. The court further pointed- where victim is incapable to defend due to tender age or minority, there may not be struggle.

Though, findings of medico legal examination are in themselves scientific evidences and these evidences are more reliable than confession in general. Supreme Court in *Man Bahadur Karki* case,[25] laid- if defendant freely confesses at court on rape charge, expert opinion of doctor conducting medico legal examination is irrelevant. Courts have to be watchful and alert, this situation might not always be true. There may be instances where defendant could confess just to save real culprit under emotion, love, pressure, threat, undue influence and so on. The world has witnessed numerous events where people have become ready to die happily and voluntarily (examples- Rajiv Gandhi suicide bomb attack, Twin towers attack) just to achieve personal criminal motive. Courts should focus more on finding truth, punishing real offender, and delivering justice rather than thinking towards reducing case loads through speedy decision delivery. Reducing excess case loads at courts is

23 Section 41(2) of Criminal Offence (Punishment Determination & Execution) Act 2074 B.S.

24 *Harendra Narayan Dev* v *GoN*; NKP 2076, V 6 (Rape) DN 10279.

25 *Man Bahadur Karki v. Nepal Government 2072* D.N. 9431

the concern of overall judicial system and not courts alone. Judicial system should make environment where courts can deliver quality judgment (*nyaya garne*) rather than pressuring courts to concentrate on reducing case loads (*muddha fadne*) by deciding higher quantity of cases. Courts are not factories to manufacture decisions. They are temples to deliver justice.

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Chapter 16

Special Medico-Legal Examination

"Physical Evidence cannot be intimidated. It does not forget. It sits there and waits to be detected, preserved, evaluated, and explained."--- Herbert Leon Macdonell

1. Examining Cases of Domestic Violence

Nepalese law defines 'domestic violence' as- 'bodily, mental, sexual or financial torture imposed to anybody within a familial relationship'. [1] Domestic violence is a pattern of behavior that involves violence or other abuse by one person to another in a domestic setting such as in marriage or cohabitation. Forensically, examination of victim or and assailant to confirm domestic violence is significant because it is a crime punishable with imprisonment and victim is entitled to compensation. Existence of domestic relationship in between the victim and perpetrator is an element that differentiates domestic violence from other forms of violence. Mostly, numbers of victim of domestic violence have been reported against women.[2] Examination of physical, mental and sexual domestic violence are more interconnected with forensic medicine than economic

1 Section 2(a) of Domestic Violence (Offence and Punishment) Act, 2066 B.S.
2 Nagesh Kumar G Rao, Textbook of Forensic Medicine and Toxicology, 338 (2nd ed. 2010).

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violence. Followings symptoms may be found in an act of domestic violence:

a) Psychological signs and symptoms

- Anxiety
- Depression
- Chronic fatigue to suicidal tendencies
- Stress disorder
- Substance abuse such as abuse of alcohol, prescription drugs etc.

b) Physical signs and symptoms

- Eardrum rupture
- Rectal or genital injury
- Bruises, cuts or fractures
- Tooth loose or broken
- Cigarette burn
- Bite marks
- Rope burn
- Defensive posture injuries

Physical signs and symptoms of domestic violence that result from traumatic injury may seem similar to injuries resulting from other causes. However, some injury's types and locations may increase the suspicion of assaultive violence such as injury over chest and genital of women and marks of stick on palm of a child.

Presence of physical sign of violence is not a single determining factor in an act of domestic violence. A medical

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practitioner may find following symptoms having no physical marks of violence:

- Headache
- Neck pain
- Chest pain
- Heart beating too fast
- Choking sensations
- Painful sexual intercourse
- Vaginal pain
- Urinary tract infection

Domestic Violence (Offence and Punishment) Act, 2066 B.S. and Regulation, 2067 B.S., establishment of Gender Violence Fund, National Strategy and Action Plan Relating to Elimination of Gender Violence and Gender Empowerment, *Muluki* Criminal Code, 2074 B.S. and *Muluki* Criminal Procedure Code, 2074 B.S. have collectively played significant role in addressing domestic violence.

Section 22 of the *Muluki* Criminal Procedure Code, 2074 B.S. mandates medico-legal examination of wounds and injuries to be done through government doctor or health worker. Schedule 16 of the Code provides format of Injury Examination Report. This format is used even in case of examination of detainee.

Medico legal examination of domestic violence is important because the prevailing law of Nepal has criminalized it as an offence against human dignity, freedom and punishable by law. Medico legal examination of domestic violence has following importance:

1) To distinguish whether an injury inflicted to victim falls under domestic violence or some other crimes.

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2) For establishment of *actus reus* of the offence of domestic violence.

3) To invoke punishment to perpetrator as prescribed by special law.

4) Amount of compensation to victim depends on the type, gravity and loss or pain inflicted as a result of domestic violence.

Degree of violence, severity of injury, battered syndrome, learned helpless situation of people etc. are identified through medical examination. This is helpful in determining rescue policy to the victim and ensure justice. Medical health care examiner has an important role to play in the course of diagnosis, treatment and referral of victim to advance care, and assist to break intergenerational cycle of domestic violence. Elucidation of the violence history, effective interview with victim, physical findings' documentation of violence, immediately assist in finding realistic approach etc. are the major role that are significant to control and prevent domestic violence in the society.

Gender Based Violence Clinical Protocol, 2072 B.S.

The ministerial level guideline was adopted by Health Ministry in 2072/05/01 and its first amendment was made on 2077/03/07. This is a guideline for health care providers (hospital management, doctors, nurses, health assistants, ANM, AHW) regarding how they should deliver quality service and standard treatment to those affected by gender violence, whether the victims are women, men or children.[3] Based on this protocol, OCMC (One door Crisis Management Centre) Report is prepared for medico legal purpose in course of examination

3 Clinical Protocol relating to Gender Based Violence, 2072 B.S. (First amendment) p 17 of 164.

of Gender Based Violence. The protocol also aims to deliver reasonable standard treatment and quality health service to gender violence victims.

The Protocol is outcome of General Recommendation No. 12 and 19 made by CEDAW Committee to state parties and the National Strategy & Action plan on Gender violence that collectively required government to enact some standard treatment guidelines for delivering health service to victims of gender violence. It not just helps health care providers to identify gender violence, deliver quality health service to victims of gender violence, appropriate counseling to facilitate rehabilitation but even facilitates medical professionals (doctors, nurses, and other health professionals) to follow needy and appropriate procedures in order to collect, examine, protect, manage, record, monitor, and keep in record various medico legal evidences.

The Protocol has detail guidelines and standard formats that every examining health professional has to strictly comply in course of following medico legal examinations:

- Report of Medical Examination in Sexual Offence (Female Subject. Relating to Schedule 11 of Rule 24(1)A of Crime Investigation Regulation, 2075 B.S.)
- Report of Medical Examination in Sexual Offence (Male Subject)
- Injury examination report (Relating to Schedule 16 of Section 22(1) of *Muluki* Criminal Procedure Code, 2074 B.S.)[4]
- Estimating time of offence through injury examination.[5]
- Mental Health Examination Report[6]

4 Supra note 3 at p 83, Schedule 5.
5 Ibid at p 86, Schedule 6.
6 Id. at p 87, Schedule 7.

- Age Estimation Report[7] (Relating to Schedule 11 of Rule 24(1)A of Crime Investigation Regulation, 2075 B.S.). Age estimation is carried by examining: (a) Development of Male genitalia, (b) Development of breasts, (c) Development of pubic hair (males and females), (d) age estimation based on dentition, (e) Radiological (bones) aging.

It provides numerous indicators of mental health measurement [8] i.e. self-awareness and behavior, mentality, speaking, and thought. Likewise, it provides for the bodily and social indicators of child sexual abuse.[9]

Medico Legal Service Operation Guidelines, 2075 B.S.

Section 2(c) of the Guidelines defines 'medico legal examinations' as following examinations: (i) Age certification, (ii) Assault, (iii) Rape, (iv) Mental condition examination, (v) Torture, (vi) Autopsy, cause of death, identification of dead body and so on, (vii) Other medical examinations and tests.

Health institution (except government health institution that meets required standard) willing to deliver medico legal service has to obtain permission from a 7 member Central Medico legal service operation Committee at federal level established under section 11 of the Guidelines. The authority is for 3 years and needs to be renewed in every 3 years. There is a 5 member Province Medico legal Service Coordination Committee in each province. Medico legal service denotes preparation of medical reports after conducting examinations, issuing expert opinion and testifying at court as expert witness during trial. Reports prepared after medico legal examination

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7 Id. at p 96, Schedule 8.
8 Id. at p 37.
9 Id. at p 51.

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are to be provided generally within 3 days of examination.

The Guidelines in Schedule 4 prescribes detail information regarding minimum standard and infrastructure a health institution willing to deliver medico legal service must comply by categorizing such institutions into three types- (a) Primary Health Centers and District Hospitals (Where autopsy number is likely not more than 30 per month), (b) Secondary level Hospitals: Existing Zonal, Regional and Sub-Regional Hospitals and Medical College Teaching Hospitals (Where autopsy number is likely 30-100 per month), (c) Tertiary level hospitals Requirements for tertiary centers/Medical Colleges or hospital with Medico-legal Full Facility (Basically these hospitals are Provincial Medico-Legal Centers). For all these three types of institutions, the guidelines prescribes minimum infrastructure for both (i) autopsy and post mortem services, and (ii) clinical forensic or medico-legal services.

Ministry reserves authority to issue necessary directives to committees in regard to medico legal service management. Health institution is duty bound to submit 4 months periodic report to Committee and the committee has to submit report to health Ministry annually.

2. Examination in Rape Offence

Nepalese criminal law defines 'rape' as any of the following five acts:[10] of *Muluki* Criminal Code, 2074 B.S.(a) Sex with adult women without consent. (b) Sex with girl below 18 years with or without consent. Consent obtained by undue means is invalid. Consent taken while disturbed consciousness is invalid. (c) Sex with wife without consent (marital rape). (d) Oral or anal penetration. (e) Partial penetration at anus/mouth/vagina, and (f) Inserting any object other than penis into vagina. Our rape

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decision... not factories to manufacture decisions. They are temples to deliver justice.

3. Intoxication/Drunkenness/Drunken Driving

Drunken person refers to a person under the influence of alcohol who has lost control of own faculties to such extent as to render the person unable to execute safely the occupation in which the person was snagged at particular time. Alcohol is itself a form of drug substance that is more commonly consumed all over the world and has numerous medico-legal concerns. Intoxicating effect of the alcohol may come as primary cause of many accidents such as road traffic injury, accidental wounds and injury, domestic and industrial wounds and also instigate gender based violence under domestic setting.[26]

Intoxication has been widely reported to have worked as a catalyst to cause death due to its combined consumption with other drugs, forming poisonous effect on the alcoholic person.

Numerous road traffic collisions are caused by drunken driving. Accidental death is often associated to drunken person due to physical and psychological imbalance. Drunken driving is legally prohibited. Thus, law enforcement agency has to examine such case. Format of Intoxication/ Drunkenness Examination Report has been provided in Annex 14 of the Rule 24 of Crime Investigation Regulation, 2075 B.S. Medico legal examination of drunkenness is conducted with motive to trace following information:

1) Details of the examinee: Details of examinees are to be

[26] Bernard Knight & Pekka Saukko, Knight's Forensic Pathology, 552 (3rd ed. 2004).

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maintained for identification and ensuring proper chain of custody. Name, age, sex and address of the examinee should be recorded. Presence of any clue for identification (if any), general appearance, date and time of examination, name of person indentifying the examinee and the brief history of the case are required to be recorded.

2) General physical features: Height, weight, blood pressure, pulsation rate, smell in breathing, respiration rate, body stance, speech etc. of the examinee are recorded.

3) Mental consciousness, ability to know time, place and person, capacity of eye to reflex, visual acuity are to be recorded.

4) Muscle coordination test: Condition of muscle coordination test should be examined through finger to finger test; finger nose test, ability to buttoning and unbuttoning test, ability to pick small subject test, gait (pattern of walk) and writing ability etc. are tested in order to determine the degree of effect produced after intoxication.

5) Condition of clothes should be examined.

6) If the examinee has suffered any injury due to accidental fall by effect of intoxication, the nature, size and site of injury should be recorded.

7) Blood alcohol concentration is examined. Blood analysis helps to induce following facts:

Less than 10 mg %	Sober
20 – 70 mg%	Drinking
80 – 100 mg %	Under the influence
150 – 300 mg %	Drunk
More than 400 mg %	Coma and death

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8) If, any treatment is provided to the examinee, that must be recorded.

9) Medico legal examiner of the drunkenness may provide following opinion:

- No sign of alcohol consumption is found.
- Consumption of alcohol is found but the examinee is not under influence of it.
- The examinee is under the influence of alcohol.
- The examinee is at acute alcohol poisoning having need of treatment in hospital.
- Any other essential remarks as the medical examiner deem appropriate.

Medico Legal Aspects of Intoxication

Intoxication is a condition that follows the administration of a psychoactive substance and results in disturbances in the level of consciousness, cognition, perception, judgment, affect, or behaviour, or other psycho-physiological functions and responses. The term is most commonly used with regard to alcohol use: its equivalent in everyday speech is "drunkenness". Alcohol intoxication is manifested by signs such as facial flushing, slurred speech, unsteady gait, euphoria, increased activity, volubility, disorderly conduct, slowed reactions, impaired judgment and motor incoordination, insensibility, or stupefaction. The medico-legal aspects connected with intoxication are:

- In case of acute intoxication, death may be common due to heavy concentration of alcohol in blood.
- Domestic homicides are often instigated by intoxication.
- Drunken people are mostly involved in fatal trauma.

- Driving whilst intoxication or presence of drunken pedestrians in busy traffic may result road accident.
- Accidental wounds and injury may occur to drunken person due to accidental fall from house, stairs etc.
- Failure of intoxicated person to dispose lit cigarette may lead to arson of property and even burn injury or death.
- Accidental drowning may be more common in intoxicated person than non intoxicated.
- Chronic alcoholism may have sign of heart failure, liver damage, reduction of weight etc.
- It is claimed that the risk of coronary heart disease may be reduced by drinking two units a day.[27]

4. Examination of Mental State & Insanity

The word insanity has no technical meaning in law or in medicine. The word insanity does not connote any definite medical entity. It is solely a legal and a sociological concept used to designate those members of the society who are unable to, because of a mental disease to adapt themselves to ordinary social environments so that the community compulsorily segregates them and takes away their rights as citizens.[28] Medico legal examination of mental state of a person is important because insane is not considered as human being having personality in the eye of law. There are four kinds of person with unsound mind. They are an idiot, a lunatic person, unsound by illness, and one who is under intoxication.[29] Courts are frequently encountered with cases having psychological

27 Ibid at 556

28 P. Jaising Modi, Modi's Medical Jurisprudence and Toxicology 609 (B V Subramanyam, 22nd ed. 1999).

29 Debashish Motira & Rakesh Kaushal, Medical Jurisprudence and Toxicology, 313 (2nd ed. 2001).

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connection such as violent behavior, psychotic murderer, sexual killer, psychopathic killer, jealous killer, alcoholic killer, infanticide, baby battering. These maniac forms of mental disorder are the causes of numerous offences.

The mental status examination involves structural assessment of the patients behavioral and cognitive functioning. It includes descriptions of the patient's appearance and general behavior, level of consciousness and attentiveness, motor and speech activity, mood and effect, thought and perception, attitude and insight, the reaction evoked in the examiner and finally, higher cognitive abilities.

Following things are required to be examined in course of medico legal examination of mental state: [30]

1) General detail of the case: General detail such as case number, name address, age, sex, education of the examinee, marital status, caste and ethnicity, examination time and date, name and relation guardian of the examinee (if the examinee is minor), general appearance etc. are recorded for the purpose of identification and maintenance of chain of custody of the case.

2) Short history and treatment detail: Short history relating to situation causing psychological problems such as sexual offence, torture, degrading treatment, domestic violence etc. are recoded. Accordingly, detail of treatment made previously is to be recorded.

3) Detail of past mental state, use of any drugs and drug abuse is shortly recorded.

4) Present psycho social problems concerning to influence, behavior, conscience, emotional symptoms are to be recorded.

Beside these above-mentioned general details of

[30] Supra note 3 at 87, Schedule 7.

background and case history, following specific examinations are important from medico legal aspect:

a) Normal forms and external condition: Under this examination style, age group, attraction, sanitation, style of clothing, speaking, psychomotor activity, catatonic features and other extraordinary activities are observed.

b) Voice and style of communication: Natural flow of communication, intelligibility of voice, pause in response, presentation etc. are observed.

c) Psychology, thought, understanding, concentration are examined.

d) Memory, knowledge, decision ability, delusion etc. are examined.

e) Clinical diagnosis is conducted in accordance to ICD 10 published and updated periodically by World Health Organization.

This examination is generally based on metal state examination of the victim of gender based violence.

However, the court may encounter case of insanity in the course of administration of justice.

Medico Legal Importance of Insanity Examination

An insane person does not possess capacity to distinguish what is right and wrong. Person who is not in position to understand the effect and consequences of his act may not be held liable for his act. He is immune from the legal sanction because of absence of mental ability. Insanity before or after commissions of offence is not considered as valid defense and hence, such offender is considered guilty and is liable.[31] The

31 *Khomnath Dahal* v. *GoN*, NKP 2071, V 5, D.N. 9158

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medico legal importance of insanity test includes:

- An insane can not exercise own rights and live own life as socially acceptable standards. Insane could not protect own proprietary interest, thus requires guardian. Appointment of guardian requires clear proof that the person in question is insane having no certainty of recovery.
- An insane can not exercise numerous legal, political and constitutional rights. For instance, insane is not considered as capable to conclude a contract, be a promoter of company or director.
- If an insane commits any criminal offence during insanity, having defect to understand nature and consequences of work, such insane is immune from any punishment.[32]
- Thus, insanity is a valid excusable general defense in criminal law.
- Degree of insanity can be categorized as complete and partial insanity, permanent and temporary insanity. An insane may temporarily be recovered from insanity for some time interval. If such insane commits any crime during such interval period, the person is liable for such crime.
- If an accused awaiting trial turns insane, the criminal trial postpones until recovery because insanity prevails over judicial proceeding.[33]
- If a convicted person becomes insane before complete execution of judgment then the execution of judgment shall be stayed.[34]
- Sometimes an accused may make false claim of insanity in order to avoid possible death sentence or rigorous

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32 Section 14 of *Muluki* Criminal Code, 2074 B.S.
33 Supra note 18
34 Supra note 18

punishment. In such situation, it is important to determine whether the person claiming defense of insanity is actually insane or sane.

Burden of Proof regarding Insanity

Generally, criminal law has presumption that every person who comes in conflict with law is sound minded having ability to understand the nature and consequences of judicial proceedings. In order to get the benefit of defense of insanity, this *prima facie* assumption to be established otherwise and the onus lies on defendant who claims oneself as insane.[35] Accused claiming benefit of insanity defense has to provide factual and reliable evidence before the court.[36]

Difference between Real and Simulated Insanity

People fake mental illness to take advantage of the legal system. It is the duty of court to decide whether an accused is insane in real sense or just doing drama of insanity. Simulated insanity is also called as Feigning Mental Illness. It is generated with malafide motive. One may find following differences in between real insanity and fabricated insanity:

Basis	Real Insanity	Feigned Insanity
Beginning	Slowly developed gradually. Less sudden	Sign of sudden development as per motive of accused
Motive of accused	No motive of insane. rather victim of disease or inborn mental disorder	Simulation as insane with motive to claim defense and avoid punishment
Cause of insane	May be. Except inborn insanity	No remarkable cause, only false attribution
Body language of person	Shows illness	Person appears normal and hyping reactions are seen

35 Section 28 of Nepalese Evidence Act, 2031 B.S.
36 Supra note 20

Symptoms	Stable symptoms like constant agitation, excitement, depression etc. seen	Person show frequently changing symptoms as he feels appropriate to make others believe in his falsehood
Observation	Observation of third person does not affect any behavior of person	Person shows normal response when not observed by others
Recovery	Depends on type of illness suffered	Faster recovery rate seen after release from jail or if gets bail

5. Examination of Bones

Bones are defined to be rigid organs that constitute part of endoskeleton of vertebrae. Bone injury may occur because of violence such as application of blunt force, concussion to hard object, collision with vehicle, muscular contraction. Children and elderly people may suffer from bone injury even from small violence due to weak bone composition. Accordingly, dislocation could be caused by muscular action or by violent act. Children bones are more fragile and could be dislocated through minor friction. Bone injury is more serious than dislocation of bone unless joints are suffered from serious disease.[37] Law enforcement agency may find human bones belonging to certain part of body, or may find bone in mutilated form. In such situation, bone examination is required for justice delivery along with personal identification.

Medico legal examination of bones is helpful to establish following facts:

1) Identification of race: Skull is most useful for race identification. Structure of skull of Caucasoid, Mongoloid

[37] Supra note 17 at 452-454

and Negroid are different which has been discussed already in Chapter 12.

2) Identification of gender: In female, the pelvic bone should be adapted to serve the additional function of child bearing and delivery and hence will be larger than male pelvic bone. Accuracy of determination of sex by examining bones depends on bone discovered. The accuracy of sex identification is 100% from complete skeleton, 98% from skull with pelvic bone, 95% from pelvis alone, 90% from skull alone, and 80% from long bones.[38]

3) Estimation of age at the time of death: It is done by examination of teeth. Advanced microscopic examination can determine the age at death by looking at the cross section of bone and comparing calcification levels and pattern.

4) Estimation of height: There is relation between length of bones and the dimensions of a person such as height. For example- four bones and formulas exist to assist with determining the height of a person based on bone length. P represents the person's height. The last letter of each formula stands for the known length of the bone (femur, tibia, humerus, or radius) through measurement. Femur: P = 61.412 + 2.31F; Tibia: P = 72.572 + 2.533T; Humerus: P = 64.977 + 3.144H; Radius: P = 73.502 + 3.876R.[39]

5) Identification clues: Personal positive identification may be established from teeth, artificial denture, diseases, deformity and old healed factures in bones.

6) Source for DNA: This depends on the level of burn. Teeth or bones act as sources for DNA. Bones can provide bone

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38 Nandy, Apurba (1996), Principles of Forensic Medicine, Reprinted 1996, New Central Book Agency P. Ltd., Calcutta, India P. 186.

39 Nancy Volk, Bones can Tell us More (Retrieved 29-10-2020: http://www.most.org/wp-content/uploads/2016/04/Bones _Can_ Tell_Us_ More. pdf)

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marrow from which DNA extraction is possible. Microscopic examination in lab is helpful but bones of great apes cannot be distinguished from human bones.[40]

7) Identification of Types of Injury: Nature of fracture, imprinted pattern, cutting edge etc. help to determine the types of injury in bone. Sometimes, inexperienced police authorities make erroneous assumption of animal bite injuries in bones of deceased as injury made on bone by sharp edged weapon.[41]

8) Establishing the cause of death: Injury mark presented in bone helps to determine cause of death. For e.g. presence of bullet hole in skull helps to induct that death is caused by gunshot.

9) Distinguish bones in mass disaster: In case of doubt of intermixing of bones of more than one person, use of Short Wave Ultraviolet Lamp is recommended to separate bones belonging to each person. Once the ultraviolet light falls on organic elements present on bones, the bones reflect different color lights. Bones of different persons reflect different color lights.[42]

10) Diagnose diseases or poisons even if corpse is extremely decomposed: Examination of bones are helpful to diagnose diseases like tuberculosis, sarcoma and so on. Through these diseases, personal positive identification can be made and cause of death can be determined. Metallic poisons such as arsenic, lead, mercury etc. can be detected by chemical

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40 Reddy, Dr. K.S. Narayan (1995). The Essentials of Forensic Medicine and Toxicology, 5th Edn., Medical Book Co., Hyderabad, India P. 97

41 Franklin, C.A. (1997) Modi's Medical Jurisprudence and Toxicology, 28th Edn. N.M. Tripathi Pvt. Ltd. P. 92

42 Reddy, Dr. K.S. Narayan (1995). The Essentials of Forensic Medicine and Toxicology, 5th Edn., Medical Book Co., Hyderabad, India P. 97

examinations even after long time of death.[43]

6. Infanticide

Infanticide or infant homicide is the intentional killing of infants. Infanticide is unlawfully killing a newly born child aged below one year, i.e killing an infant. Definition of infant however may vary as per jurisdiction. Though there is a general proposition of law that only mother can commit infanticide of her children due to suffering from mental disease such as battered women syndrome,[44]it cannot be ignored that the most frequent perpetrator is a victim's parent or stepparent.[45] Infanticide is a crime punishable with life imprisonment under Nepalese law, irrespective of howsoever the infant died-intentional killing or abandonment or neglect or ignoring the child.[46]

The cause of infanticide may be various such as psycho social trauma or disease to mother; failure to provide standard care to child; stress associated with pregnancy, delivery, puerperium (6 weeks time from delivery of placenta), lactation are some major causes instigating a mother to kill her own child. Infants born outside wedlock are frequently reported to be at risk of being the victim of infanticide.

The criminal offence of infanticide requires some act or omission from mother's side with *mala fide* motive to lead the child to die, such as imposing suffocation, omission of breast feeding, absence of arranging appropriate heat to the child. For

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43 Franklin, C.A. (1997) Modi's Medical Jurisprudence and Toxicology, 28th Edn. N.M. Tripathi Pvt. Ltd. P. 93

44 Dr. K.S. Narayan Reddy, The Essentials of Forensic Science and Toxicology, 367 (21st ed. 2002).

45 Susan Hatters Friedman and Phillip J Resnick, Child murder by mothers: patterns and prevention, World Psychiatry. 2007 Oct; 6(3): 137–141. (Retrieved 30-10-2020: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2174580/)

46 Section 177 and section 184(3) proviso clause of *Muluki* Criminal Code, 2074 B.S.

conviction in infanticide, prosecutor at first needs to establish that the child or infant was born alive. It is important to understand following types of infant birth:

a) Dead birth: Death birth refers intra uterus death of fetus. The infant was dead in mother's womb and born with peculiar death sign. Death of child may occur 3-4 days prior to delivery. Presence of rigor mortis into the muscles of fetus, sign of autolysis etc. are seen in case of dead birth. If the infant had died more than 24 hours before birth, sign of maceration may be seen such as redness of skin, and emission of peculiar sweetish smell. Dead birth is not an offence of infanticide and the mother should not be charged for infanticide in this case.

b) Stillbirth: This is a situation of birth of an infant that has died in the womb. Stillbirth is typically defined as fetal death at or after 20 or 28 weeks of pregnancy, depending on the source. It results in a baby born without signs of life. Here, a child is alive in complete process of reproduction and is born but does not breathe and show any sign of life after complete delivery. A child may die during the process of delivery. Prematurity, various forms of anoxia, congenital defects, delivery trauma such as excessive molding etc. are causes of stillbirth. Neural tears can occur as a result of birth-related head trauma associated with excessive or rapid molding of the fetal head during delivery.[47] Medical examination of stillbirth case may be important in administration of justice because it is hard to distinguish between still birth and death after birth. Stillbirth is not considered as infanticide.

c) Live birth: If child is living after complete process of

[47] Kiho L, Malcomson RDG. Keeling's fetal and neonatal pathology New York: Springer International; c2015. Chapter 34, Forensic aspects of perinatal Pathology; p. 863–73. (Retrieved 30-10-2020: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6491538/)

delivery, it is considered as live birth. It is difficult to determine when a child is born alive. Respiratory system of the child starts spontaneous function and other proof such as crying, seeing movements of the body, muscle contraction are seen. Birth is starting point of beginning of human life for the purpose of liability under homicide law. Law has accepted that a child is born alive when two conditions are satisfied and fulfilled: First, the whole body of the child must have emerged into the world, and Second, thereafter the child must have had an existence independent of its mother. It is worthy to note that medically breathing by the child is indicative sign of live birth. The independent blood circulation test is not very realistic as a determinant to when a life begins.

Medico Legal Examination of Infanticide

Medical practitioner who conducted autopsy of a deceased child often is encountered with question- whether the disputed infant was stillbirth or died due to infanticide. Autopsy examination is significant to distinguish whether the child died of natural cause during birth process or was forcefully and criminally killed after alive birth. One may find following post mortem appearances in case of infanticide:

- In live birth child, chest is less flat with increase of anteroposterior diameter after respiration and the circumference of the chest is also increased.
- Skin colour will be changed in the infant. In case of immediate birth, bright red colour will be found, darkness after 2-3 days. Permanent complexion may be formed after seven days of birth.
- Ingested fluid such as milk is found in intestine.

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Causes of Infant Death

Following causes may be associated with infant death:

a) Natural cause: Prematurity, asphyxia, birth trauma, congenital malformation, early separation of placenta etc.

b) Accidental cause:

   i. During birth: Injury to mother on her abdomen, prolapsed cord, prolonged labor, mother's death, twisting of cord around neck.

   ii. After death: Non rupture of membrane, cord around neck, head injury, non availability of nurshing care, smothering, chocking, suffocation, precipitated labour.

c) Criminal cause: By act or omission in failure to tie the cord, failure to protect the child from being suffocated by liners, failure to protect from exposure of cold or other adverse site.

It is important to identify modes and pattern of infanticide because infants are very fragile in condition and minor deliberating act or omission from the mother's side will lead infant to death. Suffocation, hypothermia, starvation, strangulation, wounds and injury, stabbing etc. are common modes for committing infanticide.

In *Shanti B.K.* case,[48] Supreme court held- illiteracy, feeling of helplessness, birth of child outside wedlock, constant social victimization etc. are some causative factors for the offence of infanticide and the mitigating factors in offence of infanticide include- psycho social status, economic status, educational status of the women. Likewise, in *Samjhna Lammichhne* case,[49] court held- infants born out of lawful relationship also may get

[48] *Shanti B K v. HMG,* NKP 2061, V 6, D.N. 7399
[49] *GoN v. Samjhna Lammichhne,* NKP 2060, V 1, D.N. 7169

killed secretly under attempt to hide birth information from public.

7. Examination of Traffic Injuries

Traffic injuries might result from various reason, such as default in driving, dangerous road structure, unethical driving habit, reckless driving, defective condition of vehicle, vehicle collision with another vehicle or hill, fall from roadside, hitting pedestrian etc. are some circumstances where driver, passenger, and third person may suffer severe injury or even death.

Traffic injury is accidental, homicidal and suicidal in nature. The velocity of vehicle, position of victim etc. determine severity of traffic injury. Most of the road traffic injuries are accidental in nature. Examination of traffic injury is important to determine cause of injury, severity of injury, nature and site of injury, liability of injury etc.

Injury to Driver and Passenger

Drivers and passengers are vulnerable if the vehicle is running at greater speed. Sudden brake failure, default of driver to control vehicle, unexpected collision by another vehicle etc. are some major causes of traffic injury in highway. Driver and passenger may suffer injury or even death due to following reasons:

- Concussion with metal or other body parts of vehicle.
- Concussion with earth surface during sudden jumping out from the moving vehicle.
- Submersion in lake and drowning due to falling down from road.
- Traumatic asphyxia due to pressure of hard object or vehicle against chest.
- Failure in timely emergency medical aid.

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Injury to Pedestrian

A moving vehicle may hit pedestrian either accidentally or homicidally. Homicidal hit to pedestrian is possible if the driver with knowledge or intention of killing hits the pedestrian. However, most of the pedestrian injury are assumed accidental. Accidentally hitting a pedestrian and then backing the vehicle to re-hit the injured passenger until death is a homicide.[50] Law treats intentionally hitting pedestrian to death as homicide. But, the trend is defective. Investigators and prosecutor feel it comfortable to modify the case under road traffic accident despite there are CCTV footage and witnesses who see the vehicle killing with back and re-hit the victim. This is not accident. Backing and re-hitting to death is intentional and homicidal and it is unjust for the society as well as victim to try for settlement of such heinous crime through dialogue, bargaining, mediation or even to investigate or prosecute such heinous act as negligence or reckless driving. Sometimes, pedestrian might voluntarily come to collide with moving vehicle with suicidal intention or due to the failure in noticing coming vehicle.

Types of Injuries

Traffic injury to pedestrian could be classified mainly into four types- (a) Primary impact injury: When vehicle strikes first, the victim sustains primary injury. Generally, primary injury is caused by front side of hitting vehicle. It is not certain that in which particular side of victim's body is the primary hit made. It depends on relative position of hitting vehicle and direction of face of pedestrian. Usually, injuries are seen in legs due to collision with bonnet. Abrasion or contusion may be formed in affected leg part. (b) Secondary impact injury: The victim may be thrown on front of the vehicle. If vehicle is not stopped there, the vehicle again collides with victim and produces secondary

[50] Section 161 of Motor Vehicles and Transport Management Act, 2049 B.S.

impact. (c) Secondary injuries: Usually, secondary injuries are produced at the side of body due to striking on earth surface. Generally, it may be head, chest or buttock. Sometimes victim may fly due to effect of primary strike and may encounter collision with another vehicle, electricity pole etc. (d) Crush injury: If vehicle tyre rolls over on victim, crush injury is seen. Pattern of tire mark could be imprinted on victim's body. The severity of injury produced by the vehicle depends on the weight of vehicle and the nature of crushed body part.

If running vehicle drags the victim then laceration, contusion, line abrasion etc. may be formed. Crush injury over abdomen may produce severe damage to vital viscera and lungs may be congested.

Two Wheeler Accidents

Two wheelers i.e. motorcycle, scoters etc. are known as most dangerous transport vehicle than other transport mechanism. Minor imbalance may lead to accident. Collisions of two wheelers with other vehicle or hitting pedestrian, minor children are often recorded. In two wheelers, fatality rate of rider is usually higher than fatality rate of driver and passengers inside other vehicle such as car, bus. But for pedestrian, fatality may be lesser in case of hit by two wheeler than by more wheelers. Rider usually suffers more severe bodily injury than the car driver because car has more safety measures than a simple motorcycle.

Medico Legal Importance of Traffic Injury

Following medico legal importance are associated with traffic injury:

- It is important to determine whether the vehicle driver or rider was driving whilst intoxication.

- To ascertain the cause of accident such as defect on vehicle condition prior to bringing into road.
- Generally vehicle injuries are accidental in nature unless proven otherwise.
- Suicidal traffic injuries are rare. Suicidal traffic injury are generally made in lonely area and there may be absence of friction of tire as an evidence showing no effort of the suicider to prevent accident by controlling the vehicle.
- Homicidal traffic injury requires some prior contact in between driver or rider and the victim.
- Simulated traffic accident may be seen as an attempt of perpetrator to conceal homicide. In such case, autopsy of deceased shows symptoms incompatible with road traffic injury such as- marks of ligature, strangulation, weapon injury, injury to backside, congestion of viscera, foreign particles at the scene of crime and so on.

• Liability to defendant may be determined based on severity of injury inflicted to victim such as dysfunction of vital body parts like hand, legs etc.

8. Gender Based Violence

Gender based violence is considered as threat to social development. Women and minor children are more vulnerable to fall the victim of gender-based violence. World Health Organization reports- 35% women worldwide have experienced either physical or sexual intimate partner violence or non-partner sexual violence in their lifetime. Accordingly, 38% of global murders of women are committed by male

intimate violence.[51]

Annual Report of the Office of Attorney General of Nepal of the Fiscal Year 2075/76 B.S shows 4423 offences relating to women and children were registered in police office within the country. Gender based violence based on religion, superstitious beliefs like witchcraft etc. are still prevalent in Nepal.

Gender based violence is board term. It is not limited up to the violence and discrimination against women. Male and children may also fall under systematic violence based on social stratification and vulnerability. However, women are more predominately victimized than male subject. Social belief, patriarchic society, weaker economic position of women etc. are major reasons contributing to violence against women.

Violence against women includes, but it is not limited to violence occurring in the family, marital rape or rape in a relationship, other sexual abuse, sexual harassment at work, trafficking of women and girls with intention of sexual and other forms of exploitation, forced prostitution, abortion of female foetus and infanticide of baby girls, traditional practices harmful to women such as genital mutilation, forced or too early marriage, widow burning, honour killing, acid attacks, stoning, war rape, and other.

Forms of Gender Based Violence

The term 'violence against women' refers "any act of gender-based violence that result in, or is likely to results in physical, sexual or psychological harm or suffering to women, including threat of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."[52]

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51 Available at http://www.who.int/mediacentre/factsheets/fs239/ en/ (accessed on 23 April 2018)

52 UN Declaration on the Elimination of Violence against Women, 1993 Art. 1

Nepalese Clinical Protocol [53] relating to Gender Based Violence, 2072 B.S. issued by Ministry of Heath acknowledges twelve forms of Gender Violence in Nepalese scenario: (a) Rape/intercourse; (b) Sexual abuse; (c) Physical abuse; (d) Forceful marriage or child marriage; (e) Deprivation from resources, opportunity or service; (f) Mental abuse; (g) Discrimination on the basis of traditional cultural practices; (h) Witch; (i) *Jhuma* (Middle daughter in Sherpa community sent to monastery with belief of prosperity in family); (j) *Badi* (originally, community who used to entertain kings in ancient western Nepal through singing and dancing with musical instruments); (k) *Deuki* (offering daughters to temple in few hilly districts of Western Nepal); (l) *Chaupadi* (traditional practice of keeping Hindu females in isolated unhygienic place for 10-11 days during onset of menstruation and then for 4-7 days every month during menstruation).

Medico Legal Examination of Gender Based Violence

Female and children, naturally being vulnerable are often the victim of violence than male. Protection, promotion, respect, dignity, empowerment of women are the major focus of laws regulating gender based violence. It desires to lead the human rights protection in new zenith. Medical examination of gender based violence has following importance:

- Medico legal examination of sexual violence such as rape, sexual battering helps to ascertain the gravity of offence committed against women.
- Medico legal examination helps to determine the connection between victim and perpetrator and helps punish perpetrator.

[53] Supra note 3 at Schedule 1, p 65.

- Psychological examination of victim of gender based violence helps to determine the mental condition of victim and to decide appropriate remedy connecting to rehabilitation.
- Physical injuries examination help law enforcement bodies to determine amount of compensation for victim in accordance to law.
- Estimation of age of minor victim and proper maintenance of record help government to examine the vulnerability of certain age group and formulate appropriate policy.
- Offence of pedophile is committed against minor thus, age estimation is needed,
- Forced marriage or child marriage impairs development process of women and may lead to various other forms of violence and offences.
- Medical doctors trained and specialized in interviewing violence or trauma victims are helpful to extract accurate cause of crime.

Gender based violence cover so much offences ranging from petty eye teasing to constant sexual harassment, rape, murder, mental trauma that are caused in both domestic and public settings. All medico legal factors such as objectives of post mortem examination, wounds and injury examination, sexual assaults examination, insanity examination etc. are relevant in gender based violence examination. Besides juridical purpose, medico-legal examination of gender based violence help provide two broader information- (i) how women as specific gender class are being suffered from violence in their daily life, and (ii) how gender based violence can be mitigated and women empowerment be advanced.

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